STATE OF MICHIGAN

COURT OF APPEALS

In the Matter of JESSE JOHNIVIN, Minor.

FAMILY INDEPENDENCE AGENCY,

Petitioner-Appellee,

v

JAMES JOHNIVIN,

Respondent-Appellant.

UNPUBLISHED
August 7, 2003

No. 246657
Delta Circuit Court
Family Division
LC No. 01-000150-NA

Before: Zahra, P.J., and Talbot and Owens, JJ.

MEMORANDUM.

Respondent-appellant appeals by delayed leave granted from the trial court order terminating his parental rights to the minor child under MCL 712A.19b(3)(c)(*i*), (g), and (j). We affirm. This case is being decided without oral argument pursuant to MCR 7.214(E).

The child is eligible for membership in an Indian tribe. "In state termination cases involving Indian children, both the federal ICWA standard [25 USC 1912(f)] and a state ground for termination must be proved." *In re SD*, 236 Mich App 240, 246; 599 NW2d 772 (1999).

Michelle Seymour, the child's mother, had her rights to the child terminated earlier. Respondent-appellant was later given custody of the child on the firm condition that neither he nor the child have any contact with Seymour. This condition was discussed repeatedly with respondent-appellant. Nonetheless, he broke it on August 15, 2002, going over to Seymour's apartment with the supposed purpose of obtaining a Medicaid card for the child. Although there was competing testimony about the purpose and the scope of the interaction with Seymour, we will not substitute our judgment for that of the trial court, which heard all the witnesses. MCR 2.613(C). Moreover, respondent-appellant's testimony concerning his feelings toward Seymour (i.e., that he felt sorry for her and believed that she had changed) and his testimony that he would allow the child to meet his mother when he was old enough are clear and convincing evidence that respondent-appellant would allow future contact between Seymour and the child. Therefore, the trial court did not clearly err in determining that statutory grounds for termination under

MCL 712A.19b(3)(c)(*i*) and (j) were established by clear and convincing evidence.[1] MCR 5.974(I) [now MCR 3.977(J)]; *In re Miller*, 433 Mich 331, 337; 445 NW2d 161 (1989).

In regard to the federal ICWA standard, 25 USC 1912(f) provides as follows:

> No termination of parental rights may be ordered in such proceeding in the absence of a determination, supported by evidence beyond a reasonable doubt, including testimony of qualified expert witnesses, that the continued custody of the child by the parent or Indian custodian is likely to result in serious emotional or physical damage to the child.

Here, there was testimony from the expert witness in Indian matters that continued custody with respondent-appellant was likely to result in serious emotional or physical damage to the child. Consequently, we are not persuaded that the trial court erred in ruling that the ICWA standard was satisfied. *In re SD*, *supra* at 246.

Further, the evidence did not show that termination of respondent-appellant's parental rights was clearly not in the child's best interests. MCL 712A.19b(5); *In re Trejo*, 462 Mich 341, 356-357; 612 NW2d 407 (2000). Thus, the trial court did not err in terminating respondent-appellant's parental rights to the child.

Affirmed.

/s/ Brian K. Zahra
/s/ Michael J. Talbot
/s/ Donald S. Owens

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[1] Even if the trial court erred in finding that a statutory ground for termination was established under MCL 712A.19b(3)(g), any error was harmless because the trial court properly found that at least one other statutory ground for termination was established. *In re Powers Minors*, 244 Mich App 111, 118; 624 NW2d 472 (2000).